

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF  
**REID H. ACORD**  
TO PRACTICE AS A PHARMACIST AND TO  
DISPENSE CONTROLLED SUBSTANCES  
IN THE STATE OF UTAH

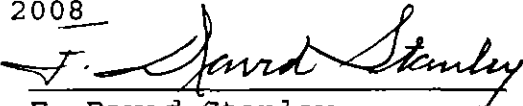
**DEFAULT ORDER**

Case No.  
DOPL-OSC-2005-168

The attached Notice of Entry of Default and Recommended Order is hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah. Respondent's licenses to practice as a pharmacist and to dispense controlled substances are thus revoked, effective the date of this Order.

IT IS FURTHER ORDERED that the revoked license, both wall and wallet sizes, as well as any embossed certificate, thus be surrendered to the Division of Occupational and Professional Licensing.

Dated this 18 day of March, 2008

  
F. David Stanley  
Director

E A L

Pursuant to Subsection 63-46b-11(3), Respondent may seek to set aside the above-stated default order by filing such a request with the Division consistent with the procedures outlined in the Utah Rules of Civil Procedure.

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

---

|                                       |   |                          |
|---------------------------------------|---|--------------------------|
| IN THE MATTER OF THE LICENSES OF      | : | <b>NOTICE OF ENTRY</b>   |
| <b>REID H. ACORD</b>                  | : | <b>OF DEFAULT AND</b>    |
| TO PRACTICE AS A PHARMACIST           | : | <b>RECOMMENDED ORDER</b> |
| AND TO DISPENSE CONTROLLED SUBSTANCES | : | Case No.                 |
| IN THE STATE OF UTAH                  | : | DOPL-OSC-2005-168        |

---

**Appearances:**

Karl G. Perry for the Division of Occupational and  
Professional Licensing

No appearance by or on behalf of Respondent

**BY THE ADMINISTRATIVE LAW JUDGE:**

Pursuant to a January 30, 2008 notice, a February 26, 2008 hearing was scheduled to be conducted in the above entitled proceeding before the State Board of Pharmacy.

The Court conducted a January 23, 2008 prehearing teleconference with Mr. Perry and George S. Diument<sup>1</sup>, II, counsel for Respondent. Mr. Diument<sup>1</sup> stated Respondent would elect not to defend the allegations of the November 15, 2007 Verified Motion for Order to Show Cause because Respondent wished to avoid incurring any further legal expenses. The Court informed respective counsel that Respondent's election not to appear for the Board hearing could prompt both the entry of his default and a subsequent proffer by the Division which - absent any matters

offered in defense or mitigation - could result in the revocation of Respondent's licenses

Pursuant to a February 13, 2008 letter, Mr. Diument<sup>1</sup> confirmed Respondent would not participate, either personally or through legal counsel, at the hearing scheduled for February 26, 2008. Mr. Diument<sup>1</sup> noted that Respondent surrendered his licenses to practice pharmacy and to dispense controlled substances, effective December 18, 2007. He also stated that Respondent recognizes that his failure to appear for the February 26, 2008 hearing would result in a default and the entry of an order consistent with the allegations set forth in the Verified Motion for Order to Show Cause.

Respondent did not appear for the February 26, 2008 hearing. Utah Code Ann. §63-46b-11(1)(b) provides an order of default may enter if a respondent in a formal adjudicative proceeding fails to attend a properly scheduled hearing after receiving proper notice.

The Division duly notified Respondent of the February 26, 2008 hearing. Given his failure to have appeared for that hearing, the Court concluded a proper basis exists to enter Respondent's default and his default was so entered.

After the issuance of a default order, §63-46b-11(4)(a) provides further proceedings may be conducted as necessary to complete the adjudicative proceeding without the participation of

the party in default §63-46b-11(4)(a) also provides a determination shall be made of all issues in the adjudicative proceeding, including those affecting the defaulting party.

Based on the proffer made by the Division, the Court thus adopts the allegations set forth in Paragraphs (1) through (3) of November 15, 2007 Verified Motion for Order to Show Cause as its Findings of Fact. The Court also adopts the only paragraph of the legal argument in the Verified Motion as its Conclusions of Law.

Specifically, the Court concludes Respondent engaged in unprofessional conduct when he violated the July 5, 2007 Order governing his licenses. Respondent failed to timely submit himself to drug testing when he did not timely complete his registration with the Division's drug testing contractor. Respondent was required to work under on-site supervision by another pharmacist. However, Respondent practiced as a pharmacist without such supervision. Respondent failed to provide his employer with a copy of the July 5, 2007 Order governing his licenses. He also failed to cause his employer to acknowledge, in writing, to the Board that a copy of that Order has been so provided.

Respondent also provided a false document to the Division, as dated September 25, 2007, which purported to be from his employer and purported to represent that the employer had received a copy of the Order and was aware of the probationary

restrictions governing Respondent's practice. The purported author of that letter did not write the letter and was not aware of that correspondence until a copy of the letter was presented to him by a Division investigator

Moreover, Respondent failed to cause his employer to submit performance evaluations to the Board on a monthly basis for six (6) months after the effective date of the Order. Respondent failed to notify his employer of that requirement. Respondent provided a false document, dated September 29, 2007, to the Division with a forged employer signature on it as purportedly reflecting an evaluation of Respondent's performance. Respondent also failed to schedule a substance abuse evaluation as required by the Board.

The Court readily concludes Respondent's surrender of his licenses with disciplinary action pending does not operate to divest the Division of authority to enter disciplinary action as to Respondent's licenses based on his violation of the July 5, 2007 Order. During the proffer made by the Division at the February 26, 2008 hearing, the Division requested that Respondent's licenses be revoked and that Respondent be precluded from reapplying for such licenses within 3-5 years after the revocation of those licenses

However, the Court duly notes the November 15, 2007 Verified Motion for Order to Show Cause, which recites that the relief

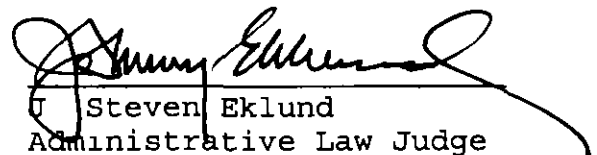
sought by the Division in this proceeding is only a revocation of Respondent's licenses. It is well settled that a judgment by default may not be different in kind from that specifically prayed for in the demand for judgment **Russell v. Martell, 681 P.2d 193, 1995 (Utah 1984)**.

Based on the foregoing, and absent any matters offered in defense or mitigation, the Court concludes the following Recommended Order is warranted.

#### RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED Respondent's licenses to practice as a pharmacist and to dispense controlled substances in this state shall be revoked, effective the date this Recommended Order may be adopted.

I hereby certify the foregoing Notice of Entry of Default, Findings of Fact, Conclusions of Law and Recommended Order were submitted to F David Stanley, Director of the Division of Occupational and Professional Licensing, on the 17<sup>th</sup> day of March, 2008 for his review and action.

  
Steven Eklund  
Administrative Law Judge